



TERMS AND CONDITIONS
PROVIDER AGREEMENT (DIRECT-TO-PROVIDER PROGRAM)

These Terms and Conditions (these "Terms") govern the relationship under the Provider Agreement (as previously titled the Provider Direct Services Agreement, the "Provider Agreement," and together with these Terms, this "Agreement") between Prosper Healthcare Lending LLC ("Prosper Healthcare") and the parties named in the Provider Agreement. Company, Provider and Principal are sometimes each called a "party" and together the "parties."

- 1. Definitions.** Any capitalized term used but not defined in these Terms shall have the meaning given in the Provider Agreement (<http://www.prosperhealthcare.com/ProviderDirectAgreement.pdf>).
- 2. Purpose.** Provider is a professional provider of healthcare services. Prosper Healthcare has established a Direct-to-Provider Program (the "Program") pursuant to which Prosper Healthcare may facilitate the financing to prospective patients for qualified healthcare services. Prosper Healthcare does not agree to act as agent or on behalf of Provider. Provider desires to participate in the Program and desires to make the Program available to qualifying borrowers ("Borrowers") who purchase healthcare services from Provider for the Borrower or a patient for whose healthcare services they wish to finance ("Patient"). Prosper Healthcare is not a lender, and all loans under the Program will be issued by the Bank (as defined in Section 7 below).
- 3. Prosper Healthcare's Responsibilities.** Prosper Healthcare's obligations include the following:
 - 3.1. To provide financial and lending support services via Prosper Healthcare's web-based software application and other systems for collecting and processing Borrower loan requests;
 - 3.2. To operate the Program in good faith, in a commercially reasonable manner and in accordance with Applicable Law (as defined in Section 9.1 below);
 - 3.3. To provide Provider with training and support for Provider's use of the Program; and
 - 3.4. To furnish Provider with brochures, website links and other information in reasonable quantity for promoting the Program to prospective Borrowers.
- 4. Provider's Responsibilities.**
 - 4.1. Provider will refer to Prosper Healthcare prospective Borrowers who desire to obtain an unsecured consumer loan for healthcare services on a right of first refusal basis. Borrowers will submit requests for financing directly online. Prosper Healthcare will facilitate the origination of loans only to such referrals as Prosper Healthcare deems acceptable, at Prosper Healthcare's election and sole discretion. Nothing contained herein obligates Prosper Healthcare to facilitate the making of any loans. If Provider provides access to computers, printers or the internet to enable a prospective Borrower to fill out his or her application, to the extent any such prospective Borrowers do not have access to computers, printers or the internet, Provider agrees to give such prospective Borrowers access to computers, printers or the internet to submit requests for loans and check their account as needed.
 - 4.2. Provider will display brochures, website links and other promotional materials, as applicable, relating to the Program which are distributed or approved by Prosper Healthcare.
 - 4.3. Provider shall maintain a Settlement Account that Provider represents and warrants will be used primarily for commercial purposes, and fair (as determined by Prosper Healthcare) legally compliant refund, return and exchange policies, which are designed and reasonably expected to be easily understood by the average Borrower/Patient (it being agreed that any return policy that precludes reimbursement under any circumstances for services not rendered is deemed unreasonable) and ensure that any material restriction or limitation is clearly and conspicuously disclosed to Borrowers/Patients in one or more documents signed by the Borrower/Patient and that such disclosure appears near the signature area of such documents.
 - 4.4. For Borrowers who utilize the Program to finance a down payment for a qualifying dental implant procedure from Provider: (1) The amount eligible for funding shall be limited to the down payment amount of the procedure, and Provider will not instruct the Patient to apply for, or accept the proceeds of, a loan for more than the down payment amount of the procedure. (2) Provider will not instruct the Patient to apply for, or accept the proceeds of, a loan for more than 50% of the total cost of the procedure, regardless of the amount typically collected as a down payment by Provider. (3) The down payment charged to each Patient financing a dental implant procedure shall be the same amount that would be charged to such Borrower if such Borrower paid for their procedure with cash or any other means.
- 5. Financing Options; Practice Fees.** The Bank shall offer qualified Borrowers referred by the Provider unsecured consumer loans on the standard or promotional financing terms selected by the Provider in the Provider Agreement. Provider will bear the cost of Practice Fees, if any, as set forth in the Provider Agreement, and the Bank will disburse proceeds in accordance with Section 7 below. Prosper Healthcare reserves the right at any time to make adjustments to these Terms, the financing options

and the Practice Fees set forth in the Provider Agreement.

6. Term & Termination.

- 6.1. Initial One Year Term. This Agreement shall have an initial term of one year from the Effective Date (as defined below) and shall renew for successive one year terms, unless terminated by either party as set forth in this Section 6. Before Prosper Healthcare can activate Provider's participation in the Program, (i) all persons at Provider's office(s) who will promote the Program and submit requests for loans must complete training in the Program, and (ii) Provider must display brochures, website links and other promotional materials for the Program in Provider's office(s) and Provider's website, as applicable. For the purposes of this Agreement, the "Effective Date" shall be the first business day following the date on which the Provider has been activated in the Program and Prosper Healthcare has verified Provider's eligibility for the Program.
- 6.2. Termination. This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice to the other, except in the event of a default by either, in which case the non-defaulting party may immediately terminate this Agreement by notifying the defaulting party that it is doing so. Prosper Healthcare may terminate this Agreement immediately by written notice if the Provider files or has instituted against it any bankruptcy or insolvency proceedings or makes any assignment for the benefit of creditors. In addition, if there is a material change in any law or in regulatory conditions affecting the Program contemplated hereunder or in the financial condition of Provider this Agreement shall likewise be automatically terminated as of the date of such material change. This Agreement shall terminate automatically if the Provider has not been activated in the Program within six (6) months of signing the Provider Agreement. Termination of this Agreement will not affect the rights and obligations of either party to this Agreement including, without limitation, any amounts then or thereafter owing by either party to the other, with respect to any Borrowers referred or loans closed prior to the effective date of any termination notice.

7. Closing of Loans and Settlement.

- 7.1. Closing. In the event a referral from Provider to Prosper Healthcare is approved and a loan transaction is consummated ("Closed Loan"), such loan transaction will be closed in the name of WebBank (the "Bank"), and the Bank will, at the direction of the Borrower, disburse to Provider from the loan proceeds an amount equal to the amount financed by the Borrower for the healthcare services being purchased, less such adjustments to which Prosper Healthcare is entitled in the normal course of business which includes any amount owed to Prosper Healthcare and any Practice Fees associated with the Program ("Disbursement"). The Disbursement shall be made to Provider's deposit account(s) at the financial institution(s) designated by Provider in the Provider Agreement, as the account(s) to be debited and/or credited, as applicable, for the settlement of Closed Loans and the payment of any Provider Fees, discounts and charges due hereunder ("Settlement Account"). The Bank shall, in its sole discretion, determine the maximum amount that it will finance for any Borrower.
- 7.2. Notification by Provider. Provider may request the Disbursements to be sent to Provider in accordance with Section 7.3 below not more than 3 business days prior to the performance of the healthcare services for which Borrower has secured the Closed Loan.
- 7.3. Disbursement and Return of Loan Proceeds. The Bank shall disburse to Provider the Disbursement through the Automated Clearing House Network ("ACH Network") by the third business day after all documentation for the loan request has been submitted and verified. Provider hereby (i) agrees to be bound by the terms of the operating rules of the National Automated Clearing House Association, as in effect from time to time, and (ii) authorizes both Prosper Healthcare and Prosper Marketplace, Inc. and its designated agents and representatives to initiate credit or debit entries and adjustments to the Settlement Account. The authorization extends only to debits made in accordance with this Agreement in order to make necessary adjustments to or returns of loan proceeds or to process Chargebacks (defined below) and for no other debits except as previously authorized by the Provider. Such debits will not require advanced notice to Provider. This authorization will remain in effect until five (5) business days after Prosper Healthcare receives written notice from Provider of its cancellation of such authorization. Neither the Bank nor Prosper Healthcare shall be liable for any delays in receipts of funds or errors in Settlement Account entries caused by third parties.
- 7.4. No Assessment. Provider may not assess any portion of administrative fees, or any other form of additional fees or consideration, to a Patient who chooses to use the Program as tender for the goods and/or services provided.
- 7.5. Providers' Obligations re Settlement Account. Provider shall not close the Settlement Account without providing Prosper Healthcare at least five (5) business days prior written notice of such closure and substitution of another account.
- 7.6. Settlement Account. Provider shall be solely liable for all fees and costs associated with the Settlement Account. In the event of termination of this Agreement, Provider agrees to maintain the Settlement Account with sufficient funds until such time as Provider and Prosper Healthcare agree that all Chargebacks and other adjustments are processed and to authorize Prosper Healthcare to credit and debit such Settlement Account until all charges, Chargebacks and other adjustments are settled as provided in this Agreement. Prosper Healthcare shall not be liable to Provider for any delays in the receipt of funds or errors in credit entries caused by Provider or by third parties including, but not limited to, a clearinghouse, Provider's financial institution, or any agent of Provider.
- 7.7. Returns and Refunds. The Program is a non-recourse program for the Provider, meaning that Prosper Healthcare will not seek repayment from the Provider if the Borrower fails to repay the loan. However, if a Patient does not use a loan or if the original treatment plan is not performed within 30 days after the Disbursement to the Provider, then upon the request of Prosper Healthcare or the Borrower, the Provider will return the amount of such Disbursement to Prosper Healthcare within 30 days of such request. Prosper Healthcare will not require return of such Disbursements for this reason if the treatment plan began within 30 days after the Disbursement and the loan is funding one of the following treatments: orthodontics (braces), ClearCorrect or

Invisalign.

In such instances, Provider will be reimbursed for Practice Fees paid on such Closed Loan, provided that the Provider returns the unused Disbursement (either in full or in part) within 30 days of the date the return request is received by the Provider. The amount of the reimbursement of Practice Fees due to a Provider will be determined by Prosper Healthcare based on the proportion of the initial amount funded in relation to the amount the Provider is requested to return. Prosper Healthcare shall credit the Settlement Account for any refund of Practice Fees. If Provider does not return the unused portion of the Disbursement within 30 days of receipt of the return request, Provider will not be entitled to a return of any portion of Practice Fees applicable to such Closed Loan. Provider will not be reimbursed for Loan payoffs made by Borrowers or for Loan payoffs required as a result of a Chargeback.

8. Dispute Resolution. Prosper Healthcare will notify Provider (or Provider will notify Prosper Healthcare) within five (5) business days of the date on which a Borrower has contacted Prosper Healthcare (or Provider) regarding any billing inquiry/dispute or other customer dispute (a "Dispute"). The date on which both Prosper Healthcare and Provider have been notified of a Dispute is the "Dispute Notice Date". Within fifteen (15) days of the Dispute Notice Date, Provider shall provide Prosper Healthcare and Borrower with appropriate documentation describing receipts and the services rendered. Provider agrees to investigate and make a good faith effort to resolve each Dispute referred to it by Prosper Healthcare or received directly from a Borrower, provided, however, that Provider shall not settle or resolve any complaint or investigation involving Prosper Healthcare or the Bank without the consent of Prosper Healthcare. Within thirty (30) days from the Dispute Notice Date, Provider shall notify Prosper Healthcare in writing of the resolution thereof or the action Provider will take to resolve the Dispute. Provider shall provide Prosper Healthcare with all such information as Prosper Healthcare may reasonably request in connection therewith. Upon reasonable request, Provider shall permit Prosper Healthcare and the Bank to examine Provider's books and records related to the Program during normal business hours of Provider; provided, however that Provider shall not be obligated to provide access to any information that it reasonably and in good faith considers to be confidential information.

9. Chargebacks.

9.1. Chargebacks. Prosper Healthcare may refuse to direct the Disbursement for a Closed Loan to the Settlement Account or may debit the Settlement Account of Provider for a Closed Loan for which Provider was previously paid in an amount equal to the amount of the loan, the account balance or the disputed portion thereof, as applicable (a "Chargeback"), in the following circumstances:

9.1.1. Delay: In the event the healthcare services are not provided by the Provider to the Patient within 30 days of the Disbursement;

9.1.2. Verifiable Identity Theft: In the event that Provider has submitted a loan request on Borrower's behalf and Borrower obtains a Closed Loan as a result of verifiable identity theft, as determined by Prosper Healthcare in its reasonable discretion;

9.1.3. Disputes: If (i) any Dispute is not resolved within thirty (30) days of the Dispute Notice Date, or (ii) Prosper Healthcare has not been informed of the resolution of the Dispute, or (iii) Prosper Healthcare has not been informed of the action Provider will take to resolve the Dispute, all in accordance with Section 8 above;

9.1.4. Noncompliance: If Provider has not complied with the terms of this Agreement or Applicable Law (as defined below), has not obtained the fully-informed consent of any Borrower, or if Prosper Healthcare reasonably determines that the Borrower was under duress during the application process; and

9.1.5. Claim or Defense: If the Borrower asserts a claim or defense on a loan related to Provider or Provider's services.

If Prosper Healthcare processes a Chargeback and the disputed amount is subsequently paid by the Borrower, Prosper Healthcare will reimburse Provider for the disputed amount. "Applicable Law" means all federal, state and local laws, statutes, rules, regulations, court orders and decrees, administrative orders and decrees, and other legal requirements of any and every conceivable type applicable to Provider and Principal and all requirements of any regulatory authority having jurisdiction over the Provider and Principal, as any such laws, statutes, regulations, orders or requirements may be amended and in effect from time to time during the term of this Agreement.

9.2. Chargeback Procedure. Neither Prosper Healthcare nor the Bank is required to make a Disbursement to Provider for a Closed Loan subject to a Chargeback. If a Disbursement has been made for such Closed Loan subject to a Chargeback, Prosper Healthcare, at its sole discretion, may deduct the amount to be charged back from the Settlement Account or offset such amount from a future payment to Provider. Alternatively, Prosper Healthcare may demand that Provider pay Prosper Healthcare the amount of the Chargeback and Provider shall make such payment within three (3) business days of such demand. Any Chargebacks which are not paid by aforesaid means shall be due and payable by Provider promptly on demand. Prosper Healthcare may contact Provider using any of the contact information provided in the Provider Agreement for the purposes of this Section 9. Prosper Healthcare or its agents may report loan payment delinquencies in excess of thirty (30) days to one or more credit reporting agencies in accordance with Applicable Law.

9.3. Compliance with Laws. Notwithstanding anything to the contrary contained herein, in the event a Borrower, in accordance with the provisions of applicable state law or the federal Truth in Lending Act and Regulation Z, as they may be amended from time to time, makes a Dispute, Prosper Healthcare has the right of Chargeback against Provider with respect to the Closed Loan which is the subject of such Dispute. Provider acknowledges and agrees that Prosper Healthcare and the Bank may perform monitoring

of compliance with this Agreement through certain means, including inquiries placed to the Borrowers.

- 9.4. Excessive Chargebacks. If Prosper Healthcare determines, in its sole discretion, that Provider is receiving an excessive amount of Chargebacks or attempted Chargebacks, in addition to Prosper Healthcare's other remedies under this Agreement, Prosper Healthcare may take any or all of the following actions: (1) review Provider's internal procedures relating to Borrower's requests for financing and notify Provider of new procedures Provider should adopt in order to avoid future Chargebacks; (2) notify Provider of the imposition of a charge (or a new rate with respect to such a charge for processing Chargebacks); and/or (3) terminate the Agreement.
10. **Principal Guarantee. Principal hereby, unconditionally and irrevocably guarantees to Prosper Healthcare, the prompt and complete payment and performance when due of all amounts incurred by Provider in connection with this Agreement (the "Guaranteed Obligations").** Principal hereby agrees, in furtherance of the foregoing and not in limitation of any other right which Prosper Healthcare may have at law or in equity against Principal by virtue hereof, that upon the failure of Provider to pay any Guaranteed Obligations, whether by demand or otherwise (including amounts that would become due but for the operation of the automatic stay under the United States Bankruptcy Code), Principal will upon demand pay, or cause to be paid to Prosper Healthcare, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations and all other Guaranteed Obligations then owed to Prosper Healthcare as aforesaid. Principal hereby agrees that all payments hereunder will be paid to Prosper Healthcare without setoff, deduction or counterclaim at the office of Prosper Healthcare located at its principal office specified at www.prosperhealthcare.com in U.S. dollars and in immediately available funds.
11. **Confidential Information.**
- 11.1. Each party and their respective affiliates, directors, officers, employees, authorized representatives, agents and advisors (including without limitation, attorneys, accountants, consultants, bankers and financial advisors) shall keep confidential all information concerning the other party's proprietary business procedures, products, services, operations, marketing materials, fees, policies or plans and all Nonpublic Personal Information of the other party (specifically including all Nonpublic Personal Information of Borrowers) that is received or obtained during the negotiation or performance of this Agreement, whether such information is oral or written, and whether or not labeled as confidential by such party (collectively "Confidential Information"). "Nonpublic Personal Information" shall include all personally identifiable financial information and any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available, and shall further include all "nonpublic personal information" as defined by federal regulations implementing the Gramm-Leach-Bliley Act, as amended from time to time. "Personally identifiable financial information" means any information a consumer provides to a party in order to obtain a financial product or service, any information a party otherwise obtains about a consumer in connection with providing a financial product or service to that consumer, and any information about a consumer resulting from any transaction involving a financial product or service between a party and a consumer. Personally identifiable financial information may include, without limitation, a consumer's first and last name, physical address, zip code, email address, phone number, social security number, birth date, and any other information that itself identifies or when tied to the above information, may identify a consumer.
- 11.2. Use of Confidential Information. For as long as Confidential Information is in possession of a party, such party shall take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to prevent the use, duplications or disclosure of Confidential Information, other than, by or to its employees or agents who are directly involved in negotiating or performing this Agreement and who are apprised of their obligations under this Section 11 and directed by the receiving party to treat such information confidentially, or except as required by law or by a supervising regulatory agency of a receiving party. Neither party shall disclose, share, rent, sell or transfer to any third party any Confidential Information. The parties shall use Confidential Information only as necessary to perform this Agreement.
- 11.3. Return of Information; Indemnity. Upon the termination or expiration of this Agreement, the receiving party shall promptly return all Confidential Information received in connection with the transaction, or shall promptly destroy any materials containing such information (and any copies, extracts, and summaries thereof) and shall provide the disclosing party with written confirmation of such return or destruction upon request. In the event a party discovers that Confidential Information has been used in an unauthorized manner or disclosed in violation of this Section 11, the party discovering the unauthorized use or disclosure shall immediately notify the other party of such event, and the disclosing party shall indemnify and hold the other party harmless from all claims, damage, liability, costs and expenses (including court costs and reasonable attorneys' fees) arising or resulting from the unauthorized use or disclosure. In addition, the non-disclosing party shall be entitled to all other remedies available at law or equity, including injunctive relief.
12. **Provider's Representations, Warranties & Covenants.**
- 12.1. Provider hereby warrants and represents to Prosper Healthcare that: (i) Provider has used reasonable efforts to ensure the accuracy and completeness of all information, documents, statements, consents and other information obtained or prepared by Provider and submitted to Prosper Healthcare, and that all such information is not misleading, fraudulent or resulting from misrepresentation; (ii) all documents or other information submitted by Provider for prospective Borrowers has been signed by such Borrower or an authorized person on Borrower's behalf; (iii) each signatory is of legal age and competent to contract at the time of execution and is not under duress (which shall include but is not limited to such person being under sedation,

extreme discomfort or heavily medicated); (iv) no person who has not completed training for the Program will discuss the Program with prospective Borrowers on behalf of the Provider; (v) it will comply with Prosper Healthcare's policies and procedures and all applicable federal, state, and local laws, ordinances and regulations including, but not limited to, the Equal Credit Opportunity Act and the Health Insurance Portability and Accountability Act of 1996; (vi) the price charged to the Patient as evidenced by the loan documentation is the same price that would be charged to the Borrower regardless of whether the Borrower pays cash for the healthcare services or utilizes the Program; (vii) it holds all licenses required in order to conduct its business as contemplated by this Agreement; (viii) the signatory on the Provider Agreement is authorized to bind the Provider and the Principal to this Agreement and no other consent or approval is required; (ix) if the Provider is doing business in the form of a business entity, then such entity is duly organized, validly existing and in good standing under the laws of the state of its formation; (x) the Provider has full power and authority to carry on its business as it is now being conducted and is duly qualified to transact business as it is now being conducted in all states where such qualification is required; and (xi) entering into this Agreement does not violate Provider's charter, certificate of organization, by-laws, or similar organizational documents as the case may be, nor any contract or agreement to which Provider is a party.

- 12.2. Provider hereby covenants to Prosper Healthcare: (i) to verify each prospective Borrower's identity with a valid form of identification; (ii) to notify Prosper Healthcare if any of its healthcare staff have been convicted of a felony; (iii) to apply the Disbursement to the balance due on the Borrower's account with Provider in order to pay for the healthcare services received by the Patient; (iv) at all times and to all persons to accurately represent the terms and conditions of the financing available under the Program as established by Prosper Healthcare from time to time; (v) to use its reasonable best efforts to fulfill all service obligations agreed to by Provider with Borrowers; (vi) to not use Prosper Healthcare's or the Bank's name or logo in any written material or advertisement, without Prosper Healthcare's prior written approval; (vii) to timely investigate all Borrower complaints related to healthcare services and resolve any legitimate Borrower complaints in a reasonable amount of time; (viii) to not use nonpublic personal information obtained from any person in connection with a loan request for any purpose not related to the loan request without the Borrower's express prior approval; (ix) that the Provider, Principal and all medical professionals named on the Provider Agreement have and will continue to have authority and are and will continue to be licensed to perform and/or provide the services for which Patients use the Program as a form of payment; (x) to have and to continue to maintain insurance coverage of such types and in such amounts as are customary and appropriate for its healthcare practice; and (xi) in the event Provider receives any payment from any source (other than Prosper Healthcare) in connection with a loan referred to Prosper Healthcare by Provider, to accept such payment(s) exclusively for the benefit of Prosper Healthcare and to immediately forward such payments to Prosper Healthcare.
- 12.3. Provider will oversee enforcement of, and compliance by Provider and all of its employees and agents with this Agreement and Applicable Laws relating to the Program and will immediately notify Prosper Healthcare of any actual or potential violations of this Agreement or Applicable Laws. Provider will cooperate with Prosper Healthcare and the Bank, and with any applicable regulatory authorities: (i) in investigating any such violation and (ii) in any effort to notify or provide satisfactory remedies to any injured parties in connection with any such violation.
- 12.4. The information furnished by Provider to Prosper Healthcare in the Provider Agreement for participation in the Program and thereafter is complete and accurate. Additionally, Provider will provide Prosper Healthcare with information of any change of control involving Provider, or any change in Provider's name, business structure or form, principal office, or state of formation, before or when the change occurs. Provider information may be shared by Prosper Healthcare with its affiliates subject to the provisions of this Agreement. With prior notice and during Provider's normal business hours, representatives of Prosper Healthcare may visit Provider's business premises and may examine only that part of Provider's books and records that pertain to the Disbursements.
- 12.5. If requested by Prosper Healthcare, any financial information furnished by Provider for participation in the Program and thereafter is complete and accurate and fairly presents the financial condition and business of Provider. Provider will also provide Prosper Healthcare from time to time upon request a copy of Provider's prepared financial statements and such other financial information prepared by Provider in the ordinary course as Prosper Healthcare may reasonably request. Prosper Healthcare shall not disclose such financial information to any unaffiliated third party.
- 13. No Consequential Damages.** Except with respect to indemnification of third party claims and confidentiality/security obligations set forth herein, (i) in no event shall either party be liable to the other for any special, incidental or consequential damages arising from such other party's actions under this Agreement, and (ii) both parties waive any claim for punitive damages arising from the other party's actions under this Agreement.
- 14. Indemnification.**
- 14.1. Indemnification by Prosper Healthcare. Prosper Healthcare shall indemnify, hold harmless and, at Provider's request, defend Provider and its affiliates and their officers, directors, employees and agents from and against any and all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, investigations, demands, assessments, adjustments, settlement payments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses), and any deficiencies suffered, sustained, incurred or paid (collectively, "Losses") by Provider in connection with, resulting from, relating to, or arising out of any of the following: (i) any breach by Prosper Healthcare of any representation or warranty set forth in this Agreement; (ii) any nonfulfillment or breach by Prosper Healthcare of any covenant or agreement set forth in this Agreement; or (iii) the gross

negligence or willful misconduct by Prosper Healthcare in the performance of obligations under this Agreement.

- 14.2. Indemnification by Provider. Provider shall indemnify, hold harmless and, at Prosper Healthcare's request, defend Prosper Healthcare and its affiliates, the Bank and its affiliates, and their officers, directors, employees and agents from and against any and all Losses suffered, sustained, incurred or paid by Prosper Healthcare or the Bank in connection with, resulting from, relating to, or arising out of any of the following: (i) any breach by the Provider of any representation or warranty set forth in this Agreement; (ii) any nonfulfillment or breach by the Provider of any covenant or agreement set forth in this Agreement; (iii) any Chargeback to Prosper Healthcare based on action or inaction by Provider or relating to goods and/or services provided or contemplated as being provided by Provider under the Program; (iv) the gross negligence or willful misconduct by the Provider in the performance of obligations under this Agreement; or (v) any malpractice claim, suit or any other similar action.
- 14.3. A party seeking indemnification under this Section 14 (the "Indemnified Party") shall give prompt written notice to the other Party (the "Indemnifying Party") of any claim for which it may seek indemnity. The Indemnifying Party shall defend such claim, action, suit or proceeding with counsel reasonably satisfactory to the Indemnified Party, and the Indemnified Party shall cooperate in the defense. The Indemnified Party may have separate counsel who shall be employed by the Indemnified Party at the Indemnified Party's expense; provided, that the Indemnifying Party shall pay the reasonable attorney's fees and expenses of such separate counsel if, in the opinion of counsel to the Indemnifying Party, the interests of the Indemnified Party and the Indemnifying Party are adverse such that separate counsel for the Indemnified Party is required. Knowledge by the Indemnified Party of any breach or non-compliance hereunder shall not constitute a waiver of the Indemnified Party's rights and remedies under this Agreement, provided the Indemnified Party has notified the Indemnifying Party of such breach or non-compliance in a timely manner.
- 15. General.**
- 15.1. Inquiries; Feedback; Publicity. Neither party will attempt to answer inquiries from Borrowers or prospective Borrowers concerning the other party's products and services. Each party will refer inquiries concerning the other party's products and services to the customer service telephone numbers provided by such other party. Such other party will use reasonable efforts to address such inquiries in a timely and effective manner. Provider acknowledges that Prosper Healthcare may contact Borrowers for feedback regarding the Program and the healthcare services received, and Provider consents to such contact. Provider agrees not to issue any announcement via press release or other public communication without the prior written approval of Prosper Healthcare.
- 15.2. Independent Contractor. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent. Each party further agrees that the relationship created by the Agreement is non-exclusive.
- 15.3. No Waiver of Defaults. Any waiver of breach or default pursuant to this Agreement will not be a waiver of any other subsequent default. Failure or delay by either party to enforce any term or condition of this Agreement will not constitute a waiver of such term or condition.
- 15.4. Intellectual Property. The software, technology and other intellectual property of Prosper Healthcare is and shall remain the sole and exclusive property of Prosper Healthcare. Prosper Healthcare's Terms of Use (<https://www.prosper.com/legal/terms-of-use>) are incorporated herein by reference.
- 15.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions hereof shall in no way be affected and shall remain in full force and effect.
- 15.6. Assignment. Neither party may assign, voluntarily, by operation of law, or otherwise, any rights or delegate any duties under this Agreement without the other party's prior written consent, and any attempt to do so without that consent will be void, except that either party may assign this Agreement to an affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets and/or voting securities. The Bank is an express third party beneficiary of Prosper Healthcare's rights hereunder.
- 15.7. Survival. Notwithstanding termination in accordance with Section 6 hereof, Sections 7-15 shall survive termination of this Agreement.
- 15.8. Notices. All notices required or permitted under this Agreement must be in writing and shall be deemed effectively given: (i) upon delivery, when delivered personally against receipt therefor; (ii) upon delivery when sent by certified mail, postage prepaid and return receipt requested; (iii) upon transmission, when transmitted by email or other electronic transmission method, provided that receipt is confirmed; (iv) upon delivery, when sent by Federal Express or other nationally recognized overnight delivery service; or (v) three days after deposit if by U.S. mail, postage prepaid. Any such notice shall be sent to the Provider at the address provided on the Provider Agreement or to Prosper Healthcare, c/o Prosper Marketplace, Inc., 221 Main Street, 3rd Floor, San Francisco, CA 94105, Attention: General Counsel, e-mail address: legalnotices@prosper.com.
- 15.9. Amendment. No alteration, waiver, cancellation, or any other change or modification in any term or condition of this Agreement will be valid or binding on either party unless made in writing and signed by duly authorized representatives of both parties. Without limiting the generality of the foregoing, by utilizing the websites maintained at www.prosperhealthcare.com (and any related landing pages and subdomains thereof) in connection with the Services, Provider thereby agrees to these Terms, as revised from time to time.

15.10. Governing Law; Negotiations; Arbitration.

- 15.10.1. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of laws provisions thereof.
- 15.10.2. In the event any claim, dispute or controversy between the parties arises out of or relates to this Agreement (a "Contract Dispute"), the parties agree that before resorting to any formal dispute resolution process as set forth in Sections 15.10.3 and 15.10.4 below, the parties will first attempt to negotiate in good faith to find a mutually acceptable resolution to the Contract Dispute for at least ten (10) business days.
- 15.10.3. If the negotiations set forth in Section 15.10.2 above do not occur or do not result in a mutually acceptable resolution, the parties agree that any Contract Dispute, other than those that would be barred at law or in equity by an applicable statute of limitations, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 15.10.4. Claims shall be heard by a single arbitrator with expertise in consumer lending mutually agreed between the parties or, if the parties cannot agree upon an arbitrator, by an arbitrator appointed by AAA. The place of arbitration shall be San Francisco, CA. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. 1 et seq. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** Each party will, upon written request of the other party, promptly provide the other with copies of all relevant documents. There shall be no other discovery allowed. The arbitration will be based on the submission of documents and there shall be no in-person or oral hearing. Any party may seek emergency relief, including injunctive relief, from the arbitrator until the arbitration award is rendered or the Contract Dispute is otherwise resolved. If emergency relief is requested, the AAA shall expedite the matter to the arbitrator for resolution. Any party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction, any interim or provisional relief that is necessary to protect the rights or property of that party, including any injunctive relief, until the arbitrator is appointed, the arbitration award is rendered or the Contract Dispute is otherwise resolved. Time is of the essence for any arbitration under this Agreement, and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. The arbitrator shall agree to these limits prior to accepting appointment. The arbitrator will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator shall not award consequential damages in any arbitration initiated under this Section 15. Each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration. The award of the arbitrator shall be accompanied by a reasoned opinion. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- 15.10.5. Each party waives its right to a trial by jury or to participate in a class action. Each party acknowledges that arbitration will limit its legal rights, including the right to participate in a class action, the right to a jury trial, the right to conduct full discovery and the right to appeal except as permitted under the Federal Arbitration Act.
- 15.11. Entire Agreement. This Agreement and any exhibits attached hereto contain the entire agreement between the parties and supersede any prior written or oral agreement between said parties concerning the subject matter contained herein. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties relating to the subject matter contained in this Agreement, which are not fully expressed herein.
- 15.12. Force Majeure. Notwithstanding anything contained herein to the contrary, neither party shall be liable to the other or to any
- 15.13. third party for any delay or default in performing its obligations under this Agreement if such delay or default is caused by circumstances beyond its control, including but not limited to wars or insurrections, riots, acts of government, strikes, work stoppages, labor troubles, fire, explosion, earthquake, flood, embargoes and/or its inability to obtain materials or to any other cause outside the reasonable control of the parties.
- 15.14. Counterparts. This Agreement may be executed in one or more counterparts, including facsimiles and electronic copies, each of which will be deemed to be a duplicate original, but all of which, taken together, will be deemed to constitute a single instrument.
- 15.15. Consent to Doing Business Electronically.
- 15.15.1. As a participant in the Program, from time to time Provider will receive disclosures, notices, documents and information ("Communications") from Prosper Healthcare, the Bank, or our respective affiliates and agents (collectively, "we" or "us"). We can only give Provider the benefits of the Program by conducting business through the Internet, and therefore we need Provider to consent to receiving Communications electronically. This Section 15.14 informs Provider of its rights when receiving Communications from us electronically.
- 15.15.2. Electronic Communications. Provider agrees that all Communications from us relating to Provider's use of the Program may be provided or made available to it electronically by e-mail or at our website. If Provider consents, Provider still has the right to receive a free paper copy of any Communication by contacting us in the manner

described below. We may discontinue electronic provision of Communications at any time in our sole discretion.

- 15.15.3. Scope of Consent. Provider's consent to receive Communications and do business electronically, and our agreement to do so, applies to all of Provider's interactions and transactions through the Program.
 - 15.15.4. Hardware and Software Requirements. To access and retain the Communications electronically, Provider will need to use a computer with Internet Explorer 7.0 or above, Firefox 3.0 or above, or similar software, Adobe Acrobat and hardware capable of running this software. Provider acknowledges that it can access the electronic Communications in the designated formats described herein. Mobile Technology. If Provider accesses our site electronically through a mobile device, such as a tablet, smartphone or similar device, Provider must be able to print and save the transmitted Communications. Applications that support printing and saving for most mobile devices can be found through the mobile device's app store for that device. If the mobile device does not have this functionality, Provider must access our website through alternate means that provide the ability to print and save the Communications.
 - 15.15.5. Withdrawing Consent. Provider may withdraw its consent to receive Communications electronically by contacting us in the manner described below. If Provider withdraws its consent, from that time forward, Provider will not be able to fully participate in the Program. The withdrawal of Provider's consent will not affect the legal validity and enforceability of any requests for funding through the Program, or any electronic Communications provided or business transacted between Provider and us prior to the time Provider withdraws its consent. With respect to pending funding requests, we will send Provider any further Communications by mail or other non-electronic means.
 - 15.15.6. Assignment. In addition, Provider further acknowledges that its consent to have all Communications provided or made available to it in electronic form and to do business on or through the Program is assignable to any of Provider's successors, heirs or assigns.
 - 15.15.7. Changes in Contact Information. Please keep us informed of any changes in Provider's email or mailing address to continue to receive all Communications without interruption. Please contact us by email at compliance@prosper.com or by writing to us at Prosper Healthcare LLC, c/o Prosper Marketplace, Inc., 221 Main Street, Third Floor, San Francisco, CA 94105, Attn: Compliance.
- 15.16. Authorization for Credit Inquiry. By executing this Agreement, Provider and Principal authorize Prosper Healthcare or its agents (including Prosper Marketplace, Inc.) to make one "soft" credit inquiry(ies) annually (which will not affect a credit score) from **one or more** consumer credit reporting agencies or other data providers for any purpose relating to this Agreement that would be authorized by applicable law during the term of this Agreement. You may withdraw this authorization by contacting your account representative.